

III



Bills of exchange March 1794

An order or bill to be good it must
be payable in money, subject to no con-
tingency ^{as to time} it may happen or may not

W. & L. 213 Do Raymond 1362. Change 1161

The contingency is of such a nature
that there is a moral certainty that it
will happen the bill is good and negotiable.
118 Willan 273 Blackstone Reports 1072

Raymond 1396. In a bill there is no need
of that it be drawn for value received; not-
withstanding nothing made in any instrument
than an acknowledgement of a consideration

A bill drawn, which is not directed to be paid
to the bearer or order is not negotiable
unless indorsed by the payee. If this in-
dorsement is general to the Bearer for instance
it is then negotiable & whoever anyone
draws it out of his hands must indorse it

The Drawer accepting becomes liable
to pay the bill. The Drawer & Indorsee may
sue the drawer of any of the indorsers and the
drawer or Drawer

A verbal acceptance is good and the ac-
ceptor becomes liable, though by common
law a verbal promise to pay the bill is not
is not obligatory upon the promisor if by
a Merchant taking a man thus accepts the draw-
er becomes liable
The drawer requiring some of the bill is not

cialle, and the best on this account.
a claim upon the drawer though the
or so called by my ~~to accept~~
This method of accepting a bill is used.

A man may bludge himself to pay a bill
even before drawn, for instance, H. of
Niles is to be given to, not including 10% of him
enquire of D. if he will accept a subsequent
draft from H. if D. agrees too. As then a
2nd draft to H. of amount. The circumstances
are varying rapidly, D. sends to inform
him that he will accept of any sub-
sequent draft from H. yet it is no longer
in the way to accept, and this information
and refusal is not a declaration
of redress in previous intent to, by en-
gaging to accept a bill at draft.

Any writing on the bill, by the drawer, and
acceptance, is all over. Absolute refusal

A simple name upon the card &
a promissory note is a good western letter 128

Law Merchant 1st Lecture

adjustment. It is
quite negotiable unless something is
put upon it by the paper or some
other party. 457 Burrows 1216-1222

1. The catch-all law will prevent no evidence
to be introduced in any case, & frame any
upshot in any and all moments in
the opinion of the various advocates of the cause.

3
A man receiving a bank note for male de-
posit, obtains a bill of exchange in the same
name. \$62. 1st Black. \$85. The same instrument
is claimed in bills of exchange Douglas 631

Joint partnership of merchants in pay-
ment of one is good against both. But where
one is in a joint partnership with
both Douglas 631

A single person after her marriage
may be endorsed by her husband & range \$16
Bill indorsed by the drawer & admin-
istrator is binding upon them both. Strong 1120
151 Duff \$87 In like manner the assignees of
a bankrupt payee by indorsing become her
sandy debt.

A bill cannot be indorsed in part but
it may be full or not at all Carter \$66

Engagement of the parties

The drawer becomes liable when the drawee fails
provided the payee has done his part

The drawer engages that the drawee is capable
of binding himself and that he may be firm
and that he will accept the bill

It is a necessary condition that the drawer be
able immediately upon the drawee
refusing to accept the bill. If the drawee be
credit 3 months say, yet if he refused the bill
the drawer becomes immediately liable
Douglas 55 for it was a debt as soon as the bill was
drawn. Strong 944

4 A bill may be good where the drawer
only writes is blank with author-
ity to fill up the bill, to prove his in-
tention in putting his name upon
a blank piece of paper evidence may
be admitted Henry Blackstone 313
The indorser stands in the same re-
lation and is liable to the indorsee in
the same manner as the drawer to the payee.

According to common Law a man
has as a variety of remedies may make
his election of one and is thereby pre-
cluded from being benefitted by any
of his other remedies if he fails in his first.
But according to Law Merchant in bills
to exchange the holder may sue any of
the indorsers if the bill has been indorsed
and if he does not obtain satisfaction
from one he may sue any other through
the hands the bill has passed 3d Max 86

The holder of the bill after having received
judgment against one of the indorsers, in
imprisoning him and releasing him to take
up other indorsers, these releases will not pre-
vent that other indorsers from pay-
ing the money, so that no release is a good
discharge 1235

The payee enters into same engagements
as the party which is must fulfill in order
to be entitled to return upon the drawer
for the money

1st The payee must present the bill at the time of payment, to the drawee for his acceptance. In case of refusal he must inform the drawer. The time of information for foreign bills is the 1st of Nov, otherwise the money will not be borne given in a reasonable time. It is not sufficient that the drawer knows of any failure, unless he knows it from the payee directly, that he may know that the bill depends upon him, the drawer.

3rd At the time of payment, the drawee must again present the bill. If the payee fails in either of these particulars, he can have no demand upon the drawer, and must himself sustain whatever loss may accrue from his own negligence.

Lecture 5th Bills of exchange.
In case of non payment or non acceptance of an inland bill of exchange, there is no particular form or time for giving notice to the Drawer; but it is expected the holder will give notice as soon as possible. The holder of a ^{foreign} bill is to pursue the drawee provided he has accepted. And if he refuses to pay the bill, the payee must in all cases institute a suit against the drawer, except where the drawee is evidently a bankrupt.

6-

assign bills. The holder in case of non acceptance, after giving due notice may recover damages for the injury he has received.

Notice in case of non acceptance must be by way of protest. The holder presents the bill to the Drawee, he refuses to accept it, the holder then applies to 2 or 3 officers called notary public, in like manner as to the bill, the Drawee again refuses, he writes its down the time of presentation, & gives a declaration of the preceding facts and notes that the holder intends to recover damages. This protest must be sent to the drawer the first post. When the time of payment arrives the same ceremonies are again to be performed, and a second protest must be sent to the drawer at which time the bill must likewise be returned or sent to the drawer. See Mercatoria H60

If the drawee is not to be found the notice must be given by way of protest as above specified.

If the drawee accepts differently from the tenor of the bill notice must be given by protest. If the drawee accepts as is likely to become bankrupt the holder may protest or not.

See next page 102 D Raymond H3
The effect & advantage of the protest is, that by this means the holder secures to himself cost and damages, which the drawer would not

7

be liable to pay, if any other steps were
purposed to the exclusion of the protest

Although the bill is duly accepted by
the drawee, yet the protest is necessary
if by some unforeseen accident the
drawee may fail, then the holder may re-
sist to the drawer.

The protest as above observed is to subject the
drawer as indorser to the payment & the
damages, interest and cost - As to the damage
the holder may have sustained by non
payment, no general rule has obtained. & a

proof is admissible to shew that the holder
if he had received the money at the day
of payment, might have made great profits
of it. By costs is ~~not~~ meant nothing more

than the expense the holder has been at in
employing the Notary public &c. See Mar. 461
As to interest the common law rule obtains
that interest is to be recd. up to the time
of rendering judgment. This principle applies
to all contracts upon interest And Bur. 1086-7

Of the pro protest ^{accepting bills by}
There are several modes of ^{supra} protest. 1st
where the drawer obliges the bill to be accepted
on account of a third person: the Drawee may
refuse for the honor of the Drawer See Mar. 456

and A bill may come indorsed to the Drawee. He may then accept it for the honour of the drawer as indorser, in these cases it must be ~~accepted~~ protested and notice sent to the drawer as indorser, as the case may be. 3rd. Any indifferent person may accept the bill in the manner for the honour of the Drawer as indorser. If a bill thus presented, is accepted for the honour of the Drawer, the acceptor is liable to all the indorsers, & if for the honour of any particular indorser, then to all subsequent indorsers. If for the honour of the drawer, the acceptor has his remedy only against the drawer, & if for any particular indorser he has his remedy not only against the drawer but all prior indorsers. See Merc. 437-8-9

When a bill is accepted it is prima facie evidence that the acceptor has effects of the drawer in his hands, and if after acceptance, he does not pay the bill, the drawer may maintain his action on the Bill against the acceptor. 1 Wils. 185. If the acceptor has no effects of the drawer, no action lies by the Drawer, but the drawer may sue the acceptor. 249

The acceptor may be discharged by the express declaration of the holder, as there may be transactions that make an implied discharge but no indulgence as attorney. To recover out of the drawer amounts to a discharge. Daug 236-7-8. A letter from the holder to the acceptor that he need give him no further trouble, for that he should look to the drawer has been considered a release.

Law Merchant

9

No indulgence as to attempt to recover of the drawee or acceptor to a discharge of the Bill. As Doug 935-7 if the holder receives a part of the money of the drawer as Indorser, or taking a new engagement from them is no discharge of the acceptor. Douglass 238 (in the notes) if the holder receives part of the money of the acceptor without giving notice to the drawer as indorser, it is a discharge of them. An receipt of part from the indorser is no discharge. See preceding Indorser or drawer. L. Raymond 444. Strange 445. Will 262.

Lecture 6th Law Merchant. Of the remedies.

An action of debt lies in Bills of Exchange. An action of debt lies against the Drawer or Indorser, in those cases where there is a contract, as there is between the Drawer and Drawer, the Holder and immediate indorser.

In instituting a suit upon a bill all the facts must be stated in the declaration. Thus the Bill was drawn, delivered to the payee, presented to the Drawer &c. The indorser to go farther, and shew himself to stand legally in the place of the payee. If the bill has been negotiated, some of the facts to be stated, shall be enumerated.

But if the bill be not paid by the holder, as in the case of an indorser, the bill is not payable, and the indorser is not liable, unless he has signed the bill in general, as to A. as a order then the indorser is only liable if he has signed the bill, and that he is the person mentioned by the order in the bill.

In an action against the Drawer the only matter to be stated, and proved, is the fact that the drawer has signed the bill, as by protest. There is a case however in Douglas 654. Where the particular facts were omitted, and a verdict obtained.

The Drawee may bring his action against the drawer, but in such a case the drawee must prove that he had not effected the bill in his hands, and that the bill was accepted by the person to whom it was drawn.

Where the Plaintiff in his declaration has stated all the facts, without alleging any promise or exceptions have been taken, but the Court has shown that no promise need be stated 1 L. Raym. 538 Salk. 128 409.

The holder of the bill may pursue all his remedies of the same time, that is may institute suits against all the indorsers, the drawer and Drawee. The proceedings however on all of them are stated by any one person, during the money to be advanced, the bill and the costs that have arisen upon all the suits in Blackstone 749 and Baly 115 1 May 815

In an action by the payee against the acceptor, if the drawer sends the bill to have been drawn by him, the handwriting must be proved.

In an action of the Indorsee against the indorser, he need not go into proof of the handwriting of the drawer. *P. Raymond* 444 Thorge 946 But only prove the hand of the Indorser.

In an action of the drawer against the Drawee, he must prove the acceptance of the bill, and that it is of the same, and his (the Drawers) name. But he need not state that the Drawee has his effects in his hands, for the acceptance is, *prima facie* evidence of his having effects in hand, and the Drawee must prove the contrary.

The Drawee against the drawer, must prove that he accepted the drawers bill and paid the same, and that he has not effects of the drawer in hand. But if the acceptor ~~proves that~~ does it, for the drawer he need not prove it is not.

Drawers shall not be permitted to prove the forgery of a bill by comparing the hand of the bill with his ordinary hand. *Thorge 1051*

At common Law the illegality of the consideration always defeats the instrument. But in Law Merchant, the illegality of the consideration in a bill that has become negotiable, will not defeat the bill. An Indorser cannot disavow it made between a contract in consideration in return *3 Dunford 418*

Policy of Insurance

Lecture 7th For a thorough knowledge of this see Beaws Lex Mercatoria.

A practice prevails (prevailing) among merchants who have large property employed in navigation to have the same insured against all losses. For which purpose they do have a policy in a hazardous situation, by obliging the officer of insurance, may secure the same as an equivalent by paying a certain premium.

Formerly it was the practice to have live-
 and, but is now restrained by statute as
 being a species of wages and remuneration.
 But as the English Statutes have no force
 in this country, it admits of a question,
 whether contracts of wages are not binding
 for the old authorities are full weight in favor
 of it, and we have no statute repealing the
 common law in this instance. But applied to
 the case where the common law of England has
 already been admitted into the State, by some
 adjudication of our courts, there is no propriety
 in the idea that our courts are bound
 and fettered by the erroneous decisions of an Eng-
 lish court. And insurances upon lives, but not
 wages, and contracts of second policy, and as
 such is against the principles of the common law, which
 makes void all contracts, against second policy
 insurances against fire are very common. In
 all insurances but one and a half per cent.

Policy of Insurance

15

That the person must have an interest in
what he gets insured; and in order to make
the insurers liable this interest must not deter-
mine until after the injury happens.
For instance A gets a house insured against fire
and immediately afterwards the same house
is destroyed by fire the policy of insurance
is void, for insurance is not assignable. 4th 554

In instruments insuring against fire &
thunder is inserted, though it is destroyed by
an invasion from a foreign enemy at sea
and peace, the insurers are not liable, but
a mob does not come within the clause
see 2 Wilson 363.

Public property, such as forts & arsenals &c are
not insurable property 3d Burras 1905

With regard to the assignment of parole evi-
dence no rule is published in regard to it see 1st 4th.

If a vessel is insured at and from a place, and
he is once lost in the harbour the insurers liable
although her cargo is not taken on board and 4th 35.

By freight of a ship is meant the profits, the
clearly by the voyage. The insurers only liable
for ship and cargo if lost and not for freight 1st 1251
It sometimes happens that there is not a total
loss, and he cannot recover a salvage then
he takes the point of a total loss, say then
the cargo does not amount to the full value then
it is total loss 1062

In a case where the owner had abandoned his vessel, and she afterwards took prizes to a large amount, it was determined that the prizes belonged to the insurers. *Bay 98 V. Key 98*
 no owner is compelled to abandon although the salvage is below freight

A privateer taken and retaken in war cases it may be a total loss. *1 Will. 191*

A merchant ship taken and retaken in war the owner may abandon. *2 Burr. 1198*

The capt. species off and departs the insurance. If the facts "rich in good conscience ought to be disclosed." Planned excuses the insurers and makes void the insurance. *Strang. 1183*
 A vessel runs a vessel at sea and thinking there will be a war, gets his vessel insured this will vitiate the insurance although a war exists. But if he has heard of a war and does not tell the insurer the insurance is void.

If the loss is occasioned by negligence the insurers are liable.

If a person expects his vessel is lost and gets it insured he must not let the vessel go. *Lex. Mer.*

A vessel intent to deviate from the place insured for, yet if the vessel is lost before he reaches the deviating point the insurers are liable. *Strang. 1245*

A double insurance is illegal

Lecture 8th. As a general rule double insurance is illegal and the loss is void. But there are exceptions. Here it may be done & the loss insurance is good

As where the first insurers become in-
sufficient, or are like to be, the owner to have his
one by secure may apply to other insurers,
and where the first are liable. Where the vessel
has been insured in some foreign port, by
a factor, the owner ignorant of his factor's
proceedings may have the same insured in his
own country.

The last insurers liable though the first is
insolvent, in some cases. Bur. 489

In time of war, the insured may warrant a
departure with a convoy, provided the vessel does
not depart with a convoy the insurance void and

Premium to be returned to the 60. Paid to 1.3

Provided a vessel is insured to a particular port
from whence she is to depart with a convoy
and her departure from thence is without
a convoy, the insurance to the first port is void
and the premium not to be returned from 1.65

When a vessel departs with a convoy and is
separated through necessity, no discharge of insurers
Lecture of the Merchant and Factor

The power of the factor depends upon his com-
mission which he receives from his principal
When the commission runs for the factor to
do with the goods entrusted to him as he
would with his own, he may trust all the goods
and in case of any insolvency among the credit-
ors he loses the principal. But if the factor's
commission is not thus extensive, and he

proceeds to trust out the goods, a loss which is sustained by the insolubility of the creditors must fall upon the factor.

Bailee is always liable at common law for the goods he has received. But the factor is only liable for his own negligence. If the factor loses goods and they are seized the loss must be sustained by the factor. If the factor is successful in moving the goods he may come upon the ^{principal} factor for the ^{loss} ~~loss~~.

The principle is liable for the fraud of his factor. This principle holds with regard to all servants. If the factor loses out the money he has received from the sale of goods in other goods these goods cannot be taken for the factor's debts. 160

Whoever purchases of the factor has a good title in the articles thus purchased. But goods pledged by the factor for the payment of his debts, will not bind the merchant, and he may recover his goods again. Strange 1178

When the factor trusts out goods, and the principal informs the purchaser not to pay the factor, they must pay the principal, and any payment to the factor, or to such informant from the principal, will not avail the purchaser against the demand of the principal.

Mariners. Where the ship is lost in any manner they lose their wages. 20 Raymond 358. 654. 707. The whole crew may sue in a single action for their wages. 146 20 Raymond 376. Then in a storm, a ship's property is thrown over, so

17

save the rest the loss shall be sustained equally among the whole proprietors of goods on board, the master indorsing \$250. But when any goods are taken out of a vessel by an enemy, no average shall take place Moore 277

When a merchant sells goods, and he finds that the purchaser is insolvent, he may rescind the goods, as if they have been delivered to a carrier with orders to deliver them forthwith, or, the vendor may countermand the orders Durnford 74-5-6. But in our Law the case is different, if A has sold a horse to B. and then finding that B is insolvent this will not authorize A to rescind the sale

When there are a number of joint owners of a ship, the majority of them determine the voyage, and by giving security to the minority (in the court of admiralty) they are released from a share in the profits of the voyage

Lecture 10th. My plan is of a notions of cohabitation, is a good proof of marriage in all cases except one, that is, when a man comes in with another man's wife Daug 166 Money paid to a man's agent is a good discharge per 366

An evidence may sometimes be admitted although he is interested, as when an agent pays over money, he may be admitted to prove that the money is paid. *Camp* 805

A man cannot testify concerning his wife nor a wife her husband. *2nd Durnford* 268
 An affidavit subjects the bail. But if the Officer had returned a non est unfairly the bail is not subjected. *2nd Durnf* 658

When money has been paid upon an illegal consideration, and an action is brought to recover it back, the illegality of the consideration is not always a sufficient evidence to prevent a recovery by the Plaintiff. *Douglas* 357

The declaration of a dying person is good evidence. *Leach* 308-399-407

A person having no idea of eternity cannot be admitted an evidence in any case. *Hein* 368

Whoever purchases any property of a person against whom a judgment has been obtained so that the creditor is like to be defrauded of his just debt, this is a fraudulent purchase and void, although the purchaser may be innocent. *Douglas* 88

In policy of insurances. Where a misrepresentation was made to the first underwriter, although none to the others the policy is void. *Camp* 786

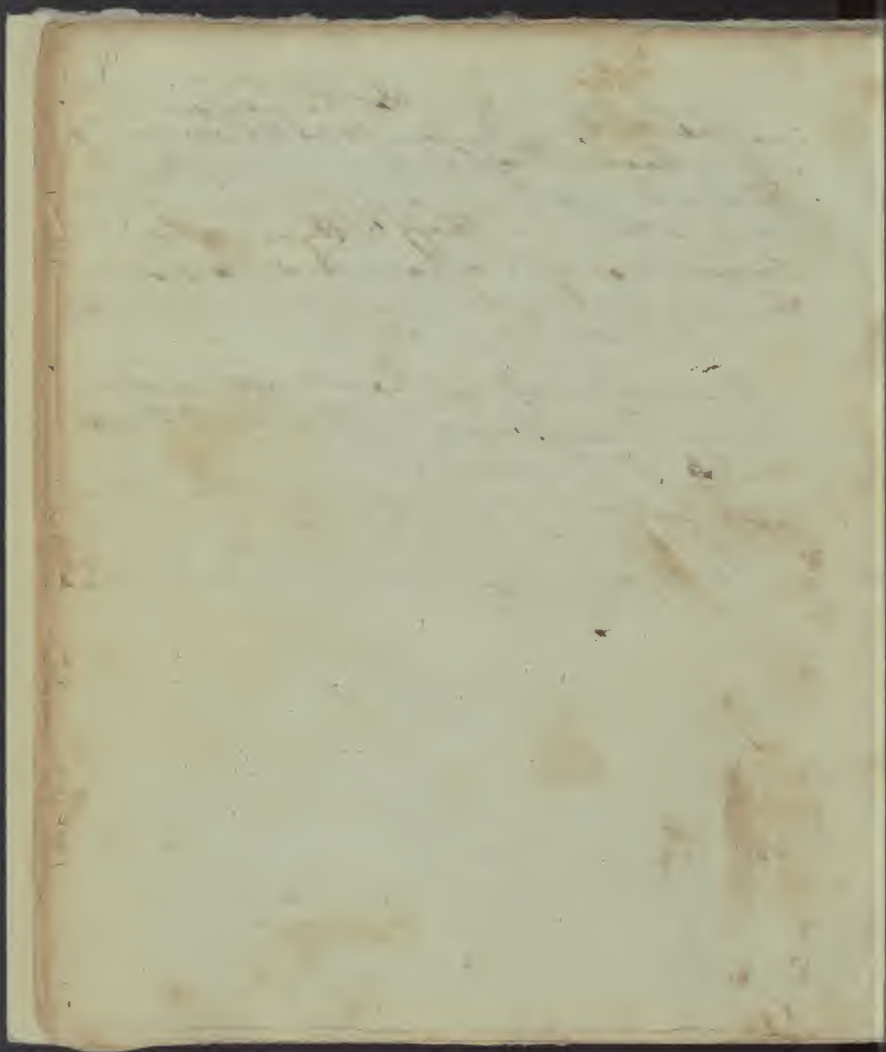
Foreign laws must be proved as facts. *Camp* 174

It is a rule that where one of two, or more, persons, is both innocent, must suffer, that the person who enabled the third person to do the wrong must suffer. ~~See~~ The case of Hoar and Hartop & all similar cases manifestly are exceptions to this rule. ~~See~~ *Hoar & Hartop* vs *Hoar & Hartop*
 In an action of trespass in order to make the defendant liable it must be a willful trespass 2 Black Rep. 900

A witness must not be interested at the time of attesting an instrument. *Strange* 125 *B* 1st Burdett 415

The subscribing witness must be obtained up to be read *Douglas* 206-89

Money is property that cannot be levied upon *Doug.* 2190



2005-28-0



